



Paper No. 5

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In re Application of
Jody Francis Powlette
Application No. 09/845,595
Filed: April 30, 2001
Attorney Docket No. PROP 98-001C

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: DECISION ON PETITION
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This is a decision on the petition filed July 18, 2001, requesting, in effect, that a "Notice" mailed May 16, 2001 be withdrawn.

Application papers in the above-identified application were filed on April 30, 2001. However, on May 16, 2001, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, page 40 of the specification appeared to have been omitted.

In response, on July 18, 2001, applicant filed the present petition with page 40. Applicant asserted that page 40 was included as part of the original disclosure for the parent application, application No. 09/172,191. As proof thereof, applicant included a postcard receipt for the parent application, indicating receipt of 101 total pages of specification. Furthermore, applicant asserted that the above-identified application incorporated the original disclosure of the parent application by reference.

Applicant also points out that page 40 of the parent application was canceled in favor of a microfiche appendix filed in the parent application on April 25, 2001. Lastly, applicant contends that page 40 has already been deposited in the above-identified application because "applicant is entitled to rely on the parent application filing materials, as well as the microfiche submission provided in the parent application."

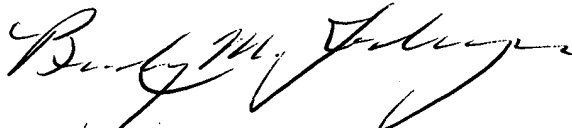
A review of the record reveals that page 40 of the specification was not filed with the above identified application on April 30, 2001.

Accordingly, the petition is **DISMISSED**.

Page 40, submitted as part of the original disclosure of the parent application, will not be entered at this time. However, because the parent application disclosure was incorporated by reference in the above-identified application, applicant may submit page 40 (or the corresponding microfiche sheet frame) as an amendment to be considered by the examiner. Page 40 will not be considered to constitute "new matter" if the page was present in the original disclosure of the prior application.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of April 30, 2001, using the specification pages submitted on that date.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.



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for Patent Examination Policy